

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

WACHOVIA BANK, NATIONAL)
ASSOCIATION, a national banking)
association,)
Plaintiff,) Civil Action Number: 2:07-mc-03364-MHT
)
v.)
ONYX CAPITAL VENTURES, L.L.C., a)
limited liability company,)
Defendant.)
v.)
BANK OF AMERICA, NATIONAL)
ASSOCIATION,)
Garnishee.)

AFFIDAVIT AND RETURN OF SERVICE

STATE OF ALABAMA)
)
MONTGOMERY COUNTY)

Before me, this undersigned authority, personally appeared WYMAN HIGGINS,
who, being known to me and being by me duly sworn, deposes and says as follows:

1. I, WYMAN HIGGINS, am over the age of 19 years, not a party to this litigation and qualified under Fed.R.Civ.P. 4 to be a special process server.
2. I served the attached documents upon Bank of America, National Association by delivering the same to The Corporation Trust Company, Registered Agent at 2000 Interstate Park Drive, Suite 204, Montgomery, Alabama 36109 on May 21, 2007, 2007 at 2:15 o'clock p.m. *WYMAN HIGGINS*

FURTHER THE AFFIANT SAITH NAUGHT.

Wynona Higgins
AFFIANT

Sworn and subscribed before me this the
23 day of May 2007

Denise Coker
NOTARY PUBLIC

My Commission Expires: 1/25/09

[SEAL]

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA**

**WACHOVIA BANK, NATIONAL
ASSOCIATION, a national banking
association,**)
Plaintiff,)
v.)
**ONYX CAPITAL VENTURES, L.L.C., a
limited liability company,**)
Case Number: 2:07-mc-03364-MHT

Defendant.

WRIT OF GARNISHMENT

**TO THE UNITED STATES MARSHAL FOR THE MIDDLE DISTRICT OF ALABAMA,
OR TO ANY OTHER AUTHORIZED OFFICER, GREETINGS:**

You are hereby commanded forthwith to summon Bank of America, National Association, as Garnishee in the above-styled cause, to appear within thirty (30) days from the date of service of this process, before the United States District Court for the Middle District of Alabama, at Montgomery, Alabama, and file a written answer, upon oath:

- (1) as to whether the Garnishee is or was indebted to the defendant Onyx Capital Ventures, L.L.C. at the time it received this process, or when it makes its answer, or during the intervening time, and in what sum or sums;
- (2) whether it will be indebted to Onyx Capital Ventures, L.L.C. in the future by existing contract or
- (3) whether by existing contract it is liable to Onyx Capital Ventures, L.L.C. for the delivery of personal property or for the payment of money which may be discharged by the delivery of personal property or which may be payable in personal property; and
- (4) whether it has or not in its possession or under its control real or personal property or things in action belonging to the said defendant.

Mailing the notarized answer to the Clerk of the Court constitutes making a proper appearance in the court.

The United States Marshall, or other authorized officer, is hereby commanded to serve a copy of the above Writ of Garnishment on the Garnishee, Bank of America, National Association, c/o The Corporation Company, its Registered Agent, at 2000 Interstate Park Drive, Suite 204, Montgomery, Alabama 36109, and make return of this Writ and the execution thereof, according to law.

Issued this the 17th day of May, 2007.

**DEBRA P. HACKETT, CLERK
UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
ONE CHURCH STREET
MONTGOMERY, AL 36104
(334) 954-3600**

By: William C. Lee
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

WACHOVIA BANK, NATIONAL)
ASSOCIATION, a national banking)
association,)
Plaintiff,) Case Number: 2:07-mc-03364-MHT
v.)
ONYX CAPITAL VENTURES, L.L.C., a)
limited liability company,)
Defendant.)

NOTICE TO DEFENDANT OF WRIT OF GARNISHMENT

TO: Onyx Capital Ventures, L.L.C.
c/o The Corporation Trust Company
Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801

PLEASE TAKE NOTICE that copies of the attached Writ of Garnishment and Affidavit in Support of Garnishment have been issued to Garnishee Bank of America, in the above-styled case. Please note your rights set forth below.

RIGHT TO CLAIM EXEMPTION FROM GARNISHMENT

A process of garnishment has been delivered to you. This means that a Court may order your wages, money in a bank, sums owed to you, or other property belonging to you, to be paid into Court to satisfy a judgment against you.

Laws of the State of Alabama and of the United States provide that in some circumstances certain money and property may not be taken to pay certain types of court judgments, because certain money or property may be "exempt" from garnishment. For example, under State law, in some circumstances, up to \$3,000.00 in wages, personal property, including money, bank accounts, automobiles, appliances, etc., may be exempt from process of garnishment. Similarly, under Federal law, certain benefits and certain welfare payments may be exempt from garnishment. Benefits and payments ordinarily exempt from garnishment include, for example, Social Security payments, SSI payments, veteran's benefits, AFDC (welfare) payments, unemployment compensation payments and workers' compensation payments.

THESE EXAMPLES ARE FOR PURPOSES OF ILLUSTRATION ONLY. WHETHER YOU WILL BE ENTITLED TO CLAIM ANY EXEMPTION FROM THE PROCESS OF GARNISHMENT, AND, IF SO, WHAT PROPERTY MAY BE EXEMPT, WILL BE

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

RECEIVED

WACHOVIA BANK, NATIONAL)
ASSOCIATION, a national banking)
association,)
Plaintiff,)
v.)
ONYX CAPITAL VENTURES, L.L.C., a)
limited liability company,)

2007 MAY 17 A 11:03

Case Number: 2:07-mc-03364-MHT

U.S. DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA

Defendant.

APPLICATION FOR WRIT OF GARNISHMENT

Plaintiff Wachovia Bank, National Association (the "Judgment Creditor") files this Application for Writ of Garnishment to the Clerk of the United States District Court for the Middle District of Alabama to issue a Writ of Garnishment upon the Judgment entered against the defendant Onyx Capital Ventures, L.L.C. (the "Judgment Debtor"), whose address is Onyx Capital Ventures, L.L.C., c/o The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

On March 29, 2007, a Judgment was rendered by the United States District Court for the Northern District of Alabama in favor of above named plaintiff Wachovia Bank, National Association, in the amount of \$1,700,000.00 with interest in the amount of \$186,516.03 plus attorney's fees and costs in the amount of \$9,775.00 for a total judgment of \$1,896,291.03, which Judgment was duly registered with the United States District Court for the Middle District of Alabama on the 10th day of May 2007.

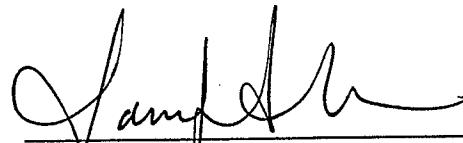
The Judgment Debtor is justly indebted to the Judgment Creditor in the amount of said Judgment, plus post-judgment interest at the prevailing legal rate and costs of this writ, less \$0.00 paid; and Bank of America, National Association (the "Garnishee"), is believed to be indebted to the Judgment Debtor, or to have effects of the Judgment Debtor, in its possession or control.

For the foregoing reasons Wachovia Bank, Nation Association, makes application to the Clerk of Court to issue a Writ of Garnishment upon the Judgment entered against the defendant Onyx, Capital Ventures, L.L.C.

The name and address of the Garnishee or it's authorized agent is:

Bank of America, National Association
The Corporation Trust Company
2000 Interstate Park Drive, Suite 204
Montgomery, Alabama 36109

Dated this the 16th day of May 2007.



Jennifer A. Harris, Attorney for Wachovia
Bank, National Association

OF COUNSEL:

BURR & FORMAN LLP
3400 Wachovia Tower
420 20th Street North
Birmingham, Alabama 35203
Phone: (205)251-3000
Fax: (205)458-5100
E-mail: jharris@burr.com

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

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Defendant.

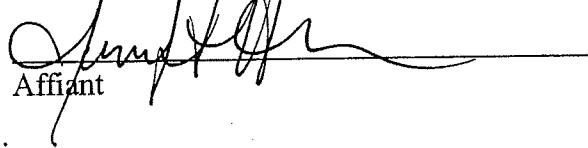
AFFIDAVIT FOR GARNISHMENT ON JUDGMENT

STATE OF ALABAMA)

JEFFERSON COUNTY)

Before me, the undersigned authority, personally appeared Jennifer A. Harris of Burr & Forman LLP, 420 North 20th Street, Suite 3400, Birmingham, Alabama 35203, who being by me duly sworn deposes and says as follows:

I am an attorney for the above-named plaintiff; on the 29th day of March, 2007 a judgment was rendered by the United States District Court for the Northern District of Alabama in favor of above named plaintiff Wachovia Bank, National Association (the "Judgment Creditor"), and against the above-named defendant Onyx Capital Ventures, L.L.C. (the "Judgment Debtor"), in the amount of \$1,700,000.00 with interest in the amount of \$186,516.03 plus attorneys' fees and costs in the amount of \$9,775.00 for a total judgment of \$1,896,291.03, which judgment was duly registered with the United States District Court for the Middle District of Alabama on the 10th day of May 2007. The Judgment Debtor is justly indebted to the Judgment Creditor in the amount of said Judgment, plus post-judgment interest at the prevailing legal rate and costs of this writ, less \$0.00 paid; and Bank of America, National Association, hereinafter referred to as the Garnishee, is believed to be indebted to the Judgment Debtor, or to have effects of the Judgment Debtor, in its possession or control, and I believe process of garnishment against the Garnishee is necessary to obtain satisfaction of said Judgment.


Affiant

SWORN TO AND SUBSCRIBED BEFORE me this
16th day of May 2007.

Wanda Dianne Butts
NOTARY PUBLIC
My Commission Expires: 11-18-08

IN THE UNITED STATES DISTRICT COURT
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WACHOVIA BANK, NATIONAL)
ASSOCIATION, a national banking)
association,)
Plaintiff,) Case Number: 2:07-mc-03364-MHT

v.)
)
)
)

ONYX CAPITAL VENTUERS, L.L.C., a)
limited liability company,)

Defendant.

ANSWER OF GARNISHEE

Now, on this day comes Bank of America, National Association, Garnishee in the above-styled action, and for answer to the writ of Garnishment served upon it on the _____ day of _____ 200____, upon oath says that it IS / IS NOT indebted to the defendant Onyx Capital Ventures, L.L.C. at the time of service of the writ of Garnishment, or at the time of making this answer; and that Garnishee WILL / WILL NOT be indebted in the future to the defendant Onyx Capital Ventures, L.L.C. by a contract then existing, or at the time of this process; and that Garnishee HAS / HAS NOT in its possession, or under its control, personal or real property, or things in action belonging to the defendant Onyx Capital Ventures, L.L.C.

Other (Explain) _____

And Garnishee having fully answered, prays to be discharged WITH / WITHOUT reasonable costs in this behalf expended.

Garnishee or Agent (Signature)

SWORN TO AND SUBSCRIBED BEFORE me this
the day of 200 .

NOTARY PUBLIC

My Commission Expires: _____

Instructions for Determining the Percentage of Wages, Salary or Other Compensation to be Withheld

- I. GARNISHMENTS TO COLLECT JUDGMENTS ARISING FROM SITUATIONS OTHER THAN CONSUMER LOANS, CONSUMER CREDIT SALES OR CONSUMER LEASES ARE SUBJECT TO THE RESTRICTIONS OF §6-10-7, Code of Alabama 1975, and Title 15, §1673, United States Code("U.S.C.").

Under Alabama and federal law, the amount subject to garnishment to collect such judgments shall not exceed the LESSER of:

- (1) twenty-five (25) percent of "disposable earnings" for the week;
OR
(2) the amount by which "disposable earnings" for the week exceed thirty (30) times the federal minimum hourly wage in effect at the time the earnings are payable.

- II. GARNISHMENTS TO COLLECT JUDGMENTS ARISING FROM CONSUMER LOANS, CONSUMER CREDIT SALES OR CONSUMER LEASES ARE SUBJECT TO THE RESTRICTIONS OF: §5-19-15, Code of Alabama, 1975 as amended by Act 88-294, effective April 12, 1988.

- A. Under this law, if the debt or demand was created ON OR AFTER April 12, 1988, the amount subject to garnishment shall not exceed the LESSER of:

- (1) twenty-five (25) percent of "disposable earnings" for the week;
OR
(2) the amount by which "disposable earnings" for the week exceed thirty (30) times the federal minimum hourly wage in effect at the time the earnings are payable

- B. If the debt or demand was created BEFORE April 12, 1988, the amount subject to garnishment shall not exceed the LESSER of:

- (1) twenty (20) percent of "disposable earnings" for the week; OR
(2) the amount by which "disposable earnings" for the week exceed fifty (50) times the federal minimum hourly wage in effect at the time the earnings are payable

DISPOSABLE EARNINGS DEFINED: An employee's "disposable earnings" means that part of earnings of an individual remaining after deduction of amounts required by law to be withheld such as Federal Income Tax, Federal Society Security Tax, and State and Local Taxes.